



October 24, 2001

Ms. Julie Gannaway  
Assistant City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR2001-4838

Dear Ms. Gannaway:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153862.

The City of Bryan Police Department (the "department") received a request for six categories of information pertaining to a named police officer. You indicate that responsive information has been or will be released to the requestor. You claim that the submitted Exhibit B, and information represented by the samples contained in the submitted Exhibit C,<sup>1</sup> constitute information that is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. Section 143.089, which applies to civil service cities,<sup>2</sup> contemplates two different types of personnel files, a police officer's civil service file that the civil service commissioner or

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole that are at issue. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and does not authorize the withholding of any other requested records containing substantially different types of information than that submitted to this office.

<sup>2</sup>We understand the City of Bryan to be a civil service city to which chapter 143 applies.

designee is required to maintain, and an internal file that the department may maintain for its own use. Local Gov't Code § 143.089(a), (g). You represent that the information at issue is maintained in an internal file of the department.

In cases in which a police department takes disciplinary action against a police officer in accordance with chapter 143 of the Local Government Code, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the officer's civil service file maintained under section 143.089(a). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and assignment to uncompensated duty. *See Id.* §§ 143.051-.055. Such records are not excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. *See Id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to an officer's alleged misconduct may not be placed in the officer's civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to an officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W. 3d 556 (Tex. App.--San Antonio 2000, no pet.); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).

Information pertaining to alleged misconduct that did not result in disciplinary action in accordance with chapter 143 is appropriately placed in the section 143.089(g) file. *See* Attorney General Opinion No. JC-0257 at 7-9 (2000). The submitted Exhibit B contains information pertaining to adverse actions against the named officer, but none are indicated to be a type of disciplinary action prescribed by chapter 143. *See* Local Gov't Code §§ 143.051-.055 (removal, suspension, demotion, and uncompensated duty). We therefore conclude that this information is appropriately placed in the police department's internal section 143.089(g) file, and as such, the information is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101.

Exhibit C, copies of training certificates that you state are physically kept in the officer's subsection (g) internal department file, appear to reasonably relate to the officer's employment relationship. You represent that "training information" not contained in the officer's internal file has been or will be released to the requestor. We thus assume that such information is held by the department for administrative purposes and, as such, is not confidential under section 143.089(g). *See City of San Antonio v. San Antonio Express-News*, 47 S.W. 3d 556 at 565. Based on your representations pertaining to Exhibit C, we conclude that this information also is confidential under section 143.089(g) and therefore must be withheld pursuant to section 552.101.

In summary, the submitted information must be withheld pursuant to section 143.089(g) of the Local Government Code in conjunction with section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

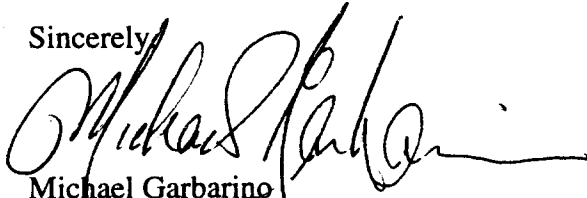
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/seg

Ref: ID# 153862

Enc. Submitted documents

c: Mr. Stephen Gustitis  
Attorney at Law  
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College Station, Texas 77840  
(w/o enclosures)